

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

DARNELL MOSLEY,	)	CASE NO. 5:04CV726
	)	
Petitioner,	)	JUDGE CHRISTOPHER A. BOYKO
	)	
Vs.	)	
	)	
JIM PETRO, Attorney General,	)	OPINION AND ORDER
	)	
Respondent.	)	

**CHRISTOPHER A. BOYKO, J:**

This matter is before the Court on the Report and Recommendation of the Magistrate Judge recommending dismissal of Petitioner's Petition as time-barred. On August 8, 2005, this Court addressed the issue of the timeliness of Petitioner's claims in light of then prevailing Sixth Circuit case law while acknowledging that the Sixth Circuit had revisited the issue en banc and a ruling was pending. In *Lopez v. Wilson*, \_\_\_\_\_ F.3d \_\_\_\_\_, No. 01-3875, 2005 U.S. App. LEXIS 21701 (6<sup>th</sup> cir. 2005) (en banc), the Sixth Circuit overruled prior case law and held, "Rule 26 (B) of the Ohio Rules of Appellate Procedure creates a collateral post-conviction procedure, and is not part of the direct right of appeal." This binding precedent of the Sixth Circuit bars Petitioner's claims as untimely.

Therefore, in light of the Sixth Circuit's opinion in *Lopez v. Wilson*, the Court ADOPTS and incorporates, in its entirety, the Magistrate Judge's Report and Recommendation, attached, overrules Petitioner's Objections and dismisses the Petition of Darnell Mosley for Habeas Corpus relief.

The Court finds that an appeal from this decision could not be taken in good faith. 28 U.S.C. §1915 (a)(3). Further, Petitioner has not made a substantial showing of the denial of a constitutional right; therefore, the Court declines to issue a certificate of appealability. 28 U.S.C. §2253 (c)(2); Fed. R. App. P. 22(b).

IT IS SO ORDERED.

9/13/06  
Date

Christopher A. Boyko  
CHRISTOPHER A. BOYKO  
United States District Judge